

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

PETRO INDUSTRIAL SOLUTIONS, LLC
(PETRO),

Plaintiff,

v.

ISLAND PROJECT AND OPERATING
SERVICES, LLC, VITOL US HOLDING II
CO., VITOL VIRGIN ISLANDS CORP,
ANDREW CANNING and OPTIS
EUROPE, LTD.,

Defendants.

CASE NO. 1:21-CV-00312

BREACH OF CONTRACT

JURY TRIAL DEMANDED

MOTION TO AMEND THE FIRST AMENDED COMPLAINT

Plaintiff, by and through undersigned counsel, moves this Court to amend his First Amended Complaint to add additional Defendants VTTI and Vitol, Inc., and allegations and damages as to events that have been discovered during the discovery process.

Motions to amend the pleadings are governed by Rule 15 of the Virgin Islands Rules of Civil Procedure. Rule 15(a) allows a party to amend its pleading and directs the Court to grant such leave “when justice so requires.”¹ The V.I. Supreme Court clarified that, “[i]n keeping with the intent and spirit of the rules [governing pleadings and amendments, decisions on the merits are favored, and dismissal of claims “on the basis of such mere technicalities” are to be avoided. *Toussaint v. Stewart*, No. 2016-0031, 2017 WL 3769522, at *9 (V.I. Aug. 29, 2017) (citing *Foman v. Davis*, 371 U.S. 178, 181, 83 S.Ct. 227, 9

¹ It is well-settled in the Virgin Islands that a court should “should freely give leave [to amend a pleading] when justice so requires.” *Bruni v. Alger*, No. ST-16-CV-639, 2019 WL 3047276, at *4 (V.I. Super. June 21, 2019), *reconsideration denied*, No. ST-16-CV-639, 2019 WL 3822308 (V.I. Super. Aug. 9, 2019) (citing V.I. R. CIV. P. 15(a)(2)).

Petro Industrial Solutions, LLC v. Island Project and Operating Service, LLC, et. al., Case No. 1:21-CV-00312

MOTION TO AMEND THE FIRST AMENDED COMPLAINT

Page 2

L.Ed.2d 222 (1962)). “[R]igid adherence to formalities and technicalities must give way before the policies underlying Rule 15.” *Heyl & Patterson Inter., Inc. v. Gov’t of the Virgin Islands*, 663 F.2d 419, 426 (3d Cir.1981).

Rule 15 does not establish a time restriction for amending a complaint, and motions to amend have been allowed at different stages of litigation. 6 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure: Civil 2d* § 1488 (1990); see *Ali v. Intertek Testing Services Caleb Brett*, 332 F.Supp.2d 827, 829 (D.V.I.2004). *Stanley v. St. Croix Basic Servs., Inc.*, No. CIV. 2003/0055, 2008 WL 5973489, at *2 (D.V.I. Mar. 4, 2008). Delay alone does not justify denying a motion to amend. *Cubica Grp. LLLP v. MAPFRE Puerto Rican Am. Ins. Co.*, No. CASE NO 2011-108, 2012 WL 2398931, at *3 (D.V.I. June 26, 2012). Even in the face of a delayed motion to amend, the nonmoving party must show additionally that it will suffer some prejudice from the amendment. See *Id.*

“[P]rejudice to the nonmoving party is the touchstone for denial of [a motion to amend a pleading].” See *Gourmet Gallery Crown Bay, Inc. v. Crown Bay Marina, L.P.*, 2017 WL 2210642, at *3. “An amendment to a complaint is considered ‘prejudicial’ if it places an unfair burden on the opposing party.” *Id.* (citations omitted). In determining whether an amendment places an unfair burden on the opposing party, Courts consider “whether allowing an amendment would result in additional discovery, cost, and preparation to defend against new facts or new theories.” *Cureton*, 252 F.3d at 273. *Stanley v. St. Croix Basic Servs., Inc.*, No. CIV. 2003/0055, 2008 WL 5973489, at *3 (D.V.I. Mar. 4, 2008).

This case is in its infancy with no scheduling order in place to date. There is no

Petro Industrial Solutions, LLC v. Island Project and Operating Service, LLC, et. al., Case No. 1:21-CV-00312

MOTION TO AMEND THE FIRST AMENDED COMPLAINT

Page 3

prejudice to Defendant.

The Motion is further supported by the marked-up version of the First Amended Complaint, **Exhibit 1** and the Second Amended Complaint, **Exhibit 2**.

At the 30(b)(6) deposition of Vitol Virgin Islands, it was attended by Charlotte Pratt Horowitz, an employee of Vitol, Inc. It was learned, at that deposition, that Vitol Virgin Islands actually had no direct employees, but it was persons employed by Vitol, Inc. that interacted with IPOS, VTTI, and Plaintiff, as to Plaintiff's work. In fact, it was Charlotte Pratt Horowitz, in her capacity as an employee for Vitol, Inc., who demanded the certificates for the welders in July 2021, despite having received the information already twice before, and the other backdated paperwork. Likewise, it was Vitol, Inc. employees who made the decision not to pay Plaintiff for certain invoices.

Adding Vitol, Inc. will not extend the discovery as Charlotte Pratt Horowitz has already been deposed and Plaintiff will not need any other depositions as the claims against Vitol, Inc..

At the deposition, it was also discovered that IPOS was a wholly owned subsidiary of VTTI, another Vitol Company. IPOS appears to no longer exist. It was further ascertained that the company that actually did the investigation, agreed with Andrew Canning that Plaintiff's documents were forged, and decided to wrongfully terminate its contract, and not pay the invoices was David Smith, who actually worked with VTTI at the time. That is the same David Smith who will be appearing as the 30(b)(6) witness for IPOS that appears not to be in existence. Plaintiff is adding VTTI documents and questions to that deposition for June 21, 2023.

Petro Industrial Solutions, LLC v. Island Project and Operating Service, LLC, et. al., Case No. 1:21-CV-00312

MOTION TO AMEND THE FIRST AMENDED COMPLAINT

Page 4

In addition, Plaintiff seeks to correct scribner errors and make allegations more clear.

WHEREFORE, Plaintiff prays for leave to file a Second Amended Complaint.

RESPECTFULLY SUBMITTED
LEE J. ROHN AND ASSOCIATES, LLC
Attorneys for Plaintiff

DATED: June 6, 2023

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Petro Industrial Solutions, LLC v. Island Project and Operating Service, LLC, et. al., Case No. 1:21-CV-00312

MOTION TO AMEND THE FIRST AMENDED COMPLAINT

Page 5

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on June 6, 2023, I electronically filed the foregoing with the Clerk of the Court using the electronic filing system, which will send a notification of such filing to the following:

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Petro Industrial Solutions, LLC v. Island Project and Operating Service, LLC, et. al., Case No. 1:21-CV-00312

MOTION TO AMEND THE FIRST AMENDED COMPLAINT

Page 6

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